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CASES CITED

STATUTES

MISCELLANEOUS

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1490

FEDERAL POWER COMMISSION, *Petitioner*

v.

TEXACO INC., ET AL.

No. 72-1491

DUDLEY T. DOUGHERTY, ET AL., CO-EXECUTORS OF THE ESTATE OF MRS. JAMES R. DOUGHERTY, ET AL., *Petitioners*

v.

TEXACO INC., ET AL.

On Petitions for Writ of Certiorari to the United States Court Of Appeals for the District of Columbia Circuit

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BRIEF IN OPPOSITION OF TENNESSEE GAS PIPELINE COMPANY, A DIVISION OF TENNECO INC.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. pp. 1a-22a)[1] is reported at 474 F.2d 416. The initial order (No. 428) of the Federal Power Commission (Pet.

[1] "Pet. App." refers to the appendices to the petition in No. 72-1490.

App. pp. 29a-46a), its order (No. 428-A) of amendment (Pet. App. pp. 47a-49a), and its order (No. 428-B) denying rehearing (Pet. App. pp. 50a-84a) are reported at 45 FPC 454, 45 FPC 548, and 46 FPC 47, respectively.

JURISDICTION

The judgment of the court of appeals was entered on December 12, 1972 (Pet. App. pp. 23a-25a). Petitioners' petitions for rehearing were denied on February 5, 1973 (Pet. App. pp. 26a-28a). The petitions for a writ of certiorari were filed on May 3, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the Natural Gas Act vests discretion in the Federal Power Commission to exempt small producers from the just and reasonable rate requirements provided in Section 4 and 5 of the Act and to attempt to close the resulting regulatory gap indirectly through review of the prices charged by such small producers as costs to the purchasers in proceedings involving the rates of such purchasers.

STATUTE INVOLVED

The pertinent provisions of Section 1(b), 4, 5 and 16 of the Natural Gas Act, 15 U.S.C. 717(b), 717c, 717d and 717o are set forth in the Appendix, *infra* pp. 1a-2a.

STATEMENT OF FACTS

By Notice of Proposed Rulemaking issued July 23, 1970, the Federal Power Commission proposed "prospectively to exempt from regulation under the Natural Gas Act all existing and all future jurisdictional

sales made by small producers", *i.e.* producers whose total jurisdictional sales do not exceed ten million Mcf of natural gas annually. 35 Fed. Reg. 12220. Following the submission of written comments by various affected producers, pipelines,[2] distributors and State Commissions, and the holding of an informal conference, the Commission promulgated its Order No. 428 here involved (Pet. App. 29a-46a).

By this Order which is captioned "Exemption of Small Producers from Regulation", the Commission provided for the issuance of blanket certificates to small producers under which they would thereafter be exempt generally from the rate, certificate and other filing requirements provided in the Natural Gas Act and the Commission's regulations thereunder (Pet. App. 42a-43a).[3] Under such certificates small producers would *inter alia* be "authorized to make small producer sales nationwide pursuant to existing and future contracts at the price specified in each such contract" (Pet. App. 43a). In addition, they would be relieved of the obligation to make refunds with regard to any excessive rates (Pet. App. 37a).[4]

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[2] Respondent, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) filed comments as an affected pipeline company.

[3] Except for the filing of an abbreviated annual report setting forth their total annual volume of jurisdictional sales (Pet. App. 45a), and for compliance with the abandonment provisions of Section 7(b) of the Act (Pet. App. 38a-39a, 43a-44a).

[4] In addition to small producer rates no longer being limited by the area rates generally applicable to jurisdictional sales of gas, the Commission ruled that although it had previously held certain types of escalation clauses to be inoperative as contrary to the public interest, it would permit such clauses to operate to increase small producer rates *up to* the applicable area or guideline rates (Pet. App. 32a).

In its Order, the Commission observed that the Natural Gas Act did not require it to regulate all jurisdictional sales of natural gas and left room for the exercise of administrative judgment and discretion such as were involved in its proposed small producer exemption (Pet. App. 30a-31a). Further, it asserted that exempting small producers from the Act's requirements constituted an important step in its discharge of its responsibilities of assuring an adequate gas supply for the interstate market (Pet. App. 31-32a):

> "Our purpose in taking action here is not to increase contract prices, but to facilitate the entry of the small producer into the interstate market and to stimulate competition among producers to sell gas in interstate commerce. We seek to assure the small producer that when he enters into a new contract for the interstate sale of gas, the provisions of his contract will not be subject to change. We also want to relieve the small producer of the expenses and burdens relating to regulatory matters. Our action should also ease the administrative burdens connected with processing small producer filings."

The proposed exemption for the small producers, the Commission went on "does not constitute deregulation of sales by small producers. We will continue to regulate such sales but will do so at the pipeline level by reviewing the purchased gas costs of such pipeline with regard to small producer sales" (Pet. App. 32a). Adoption of such indirect regulation, the Commission claimed, came within its "ample authority to inquire * * * into the reasonableness of all items of operating expense, including the cost of purchased gas, and to disallow items of cost which are imprudent." (Pet. App. 33a).

Thus, as a substitute for its direct regulation of the rates for small producer sales to pipelines and large

producers, the Commission proposed that resales of such gas by the pipelines and large producers

> "* * * be subject to reduction and refund, with respect * * * to that part of the rate which is unreasonably high considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing area. Tracking increases to the extent they reflect small producer prices for new sales above the standard set forth above may be suspended, and if so, will be collected subject to reduction and refund. The issue will be resolved either in (1) a pipeline rate case or (2) a proceeding involving only the track ing increase.[5] Pipelines must state the grounds for claiming that the rate at which gas is purchased from a small producer is required by the present or future public convenience and necessity. * * * In this manner the market mechanism in the light of regulation of pipeline rates will be protective of consumer interests." (Pet. App. 37a)[6]

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[5] Purchasers from small producers were permitted to file tracking increases

> "only if the small producer rate increases, or such increases together with other increases authorized for tracking by applicable Commission rules or orders, affect the pipeline's average cost of purchased gas by one mill or more" (Pet. App. 38a).

The effect of this requirement for Tennessee is that it has to absorb all small producer increases until the accumulated total amount of such increases, either alone or together with other increases authorized for tracking, is approximately $1,200,000 in annual gas purchase costs.

[6] By Order No. 428-A the Commission prescribed the form of annual statement to be filed. See Pet. App. pp. 47a-49a. By Order No. 428-B, the Commission denied the applications for rehearing filed, *inter alia*, by Tennessee and reaffirmed its basic rulings in Order No. 428 after eliminating some of the retroactivity contained in that order (Pet. App. 50a-84a).

On appeal by several affected large producers and pipelines, including Tennessee, the court below held that Congress had made the statutory just and reasonable rate standards applicable to all wholesale sales of natural gas in interstate commerce, and had not vested any discretion in the Commission to exempt any such sales from direct Commission regulation (Pet. App. 7a-10a). Moreover, the court below pointed out that the so-called indirect control of small producer prices through regulation of large producers and pipelines was not a complete substitute since the purchased gas costs to be passed on by such purchasers were to be measured not by the statutory just and reasonable standard but by whether the price paid by these purchasers were

> "unreasonably high, considering appropriate comparisons with ***highest contract prices*** for sales by large producers ***or*** the prevailing market price for ***intrastate*** sales in the same producing areas" (Pet. App. 11a). (Emphasis in original)

In other words, the court noted (Pet. App. 12a-13a):

> " * * * At best, the indirect controls [the Commission] has proposed will insure that the small producer rates which are passed on to consumers are below levels set by private contracting parties (or potentially by state regulation which is not necessarily tied to the federal standard). Nothing at all insures that those levels will be 'just' or 'reasonable'. That is the essential flaw in the Commission's plan. That is the point at which the FPC abdicates its regulatory responsibility in derogation of the purposes and mandatory terms of the statute. Indirect 'regulation' by such novel 'standards' is worse than an exemption simpliciter. Such an approach retains the false illusion that a

government agency is keeping watch over rates, pursuant to the statute's mandate, when it is in fact doing no such thing."

Further accepting the validity of "the Commission's motives [and] its opinion that some form of deregulation of small producers might benefit the consumers of natural gas" (Pet. App. 5a), the court pointed to the recent cases in which it had approved various Commission experiments designed to alleviate the gas shortage (Pet. App. 7a).[7] However, it held that it could not approve the Commission action here since that action went beyond the limits on the Commission's authority (Pet. App. 7a). In this regard, the court further commented (Pet. App. 16a):

> "* * * we cannot hold that *non*regulation is the statutory equivalent of regulation. Only Congress can knowingly prescribe nonregulation for small producers in lieu of the existing statutory scheme of regulation found by the Supreme Court in *Phillips* to be mandatory under the Natural Gas Act for all producers." (Emphasis in original).[8]

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[7] *Public Service Commission* v. *F.P.C.*, 467 F.2d 361 (D.C. Cir. 1972); *Public Service Commission* v. *F.P.C.*, — F.2d — (Nos. 71-1197, *et al.*, decided 16 May 1972).

[8] In so holding, the Court also noted (Pet. App. 16a):

> "All of this is not to say that a proper regulatory determination, within the letter and spirit of the Natural Gas Act, could not set a just and reasonable rate for small producers higher than that for large producers. Given the special problems and practices of small producers, such a result is certainly conceivable. But the small producers cannot be exempted from the regulatory scheme, and have their prices tied to the free market, by administrative agency fiat."

In his dissent, Judge Fahy agreed that "all rates and charges of any natural-gas company * * * which includes the small producers * * * shall be just and reasonable and if not, that they are unlawful." (Pet. App. 18a). However, he claimed that "no particular rate or charge [was] before [the court] for scrutiny as to its justness or reasonableness" (Pet. App. 18a). Further observing that the Commission had authority to classify small producers separately (Pet. App. 19a), he took the position that

> "the Commission had [not] abdicated its responsibility to insure that rates of small producers will be just and reasonable. It does not appear from the record before us that any such price that might be charged is reasonably unjust or unreasonable. * * * Moreover, consumer protection is promised and I cannot now hold that the promise will not be fulfilled" (Pet. App. 21a).

Accordingly, while he would have affirmed Order No. 428 generally on the theory that it would not "lead inevitably to unjust or unreasonable rates charged by small producers" (Pet. App. 19a), he nevertheless

> "* * * would strike its provisions prohibiting refunds to pipelines and large producers, leaving open to the Commission to exercise such authority as it has to protect large producers and pipelines in the event the Commission finds they have been charged unreasonably high prices by small producers. * * * Should such a modification temper to a degree the charges of small producers, I think that result must be accepted as required by the public interest represented by the Act. I do not think such possible tempering would go so far as to defeat the purposes of Order No. 428." (Pet App. 22a)

ARGUMENT

There is no question that there is an acute shortage of natural gas and that the Commission should be permitted "to make pragmatic adjustments in its regulatory procedures" to help alleviate that shortage (see Pet. p. 9). However, the Natural Gas Act provides limits within which the Commission may act and hence, as the Commission explicitly recognizes (Pet. p. 9) any such adjustment can be valid only if it is "consistent with [the Commission's] regulatory obligations." The Court below has held that the Commission's proposal here to exempt small producers' prices from direct Commission regulation and instead to review such prices indirectly as reflected in costs to the purchasing pipelines and large producers, exceeded the limits upon the Commission's authority. Since, as shown below, this holding is clearly required by the plain language of the Natural Gas Act and its legislative history, review by this Court is unwarranted.[9]

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[9] It is far from clear whether in any case, the Commission action is suited to achieve its purported objective. In addition to the absence of any showing that small producers need incentives, over and above those being provided to producers generally, to increase their exploratory activities, there is no evidence or statistics in the record as to the number of small producers which could be expected to initiate such activities in response to the Order No. 428 incentive. Indeed, since the exemption applies only to the first 10,000,000 Mcf annual volume sold, and small producers of necessity are already making some sales (with the most successful probably at or approaching the 10,000,000 Mcf annual level), the purported incentive could at most have only very limited effect, *i.e.*, only so long as the small producer sales continue to remain below the 10,000,000 Mcf level.

1. Contrary to the Commission's *present* argument (Pet. pp. 12-13) [10] both the intent and end-result of Order No. 428 clearly are to free small producers from the substantive requirements of the Natural Gas Act, including specifically the just and reasonable rate standards prescribed in Sections 4 and 5 of the Act. Freedom from these restraints obviously constitute the added incentive being offered to small producers to explore for new gas reserves. Small producers in many areas had already been freed from compliance with most of the Act's other requirements including the need to obtain Commission permission before raising their prices up to the applicable just and reasonable area rate. Order No. 308, 34 FPC 1202 (1965); Section 157.40 of the Commission Rules and Regulations under the Natural Gas Act; cf. *Permian Basin Area Rate Cases,* 390 U.S. 747, 784-787 (1968).

Moreover, Order No. 428's provisions for permitting small producers to charge the prices specified in their contracts and relieving them of refund obligations with respect thereto (see Pet. App. 37a, 43a, *supra* p. 3), serve further to demonstrate the Commission's understanding that the prices to be charged by the small producers would exceed the applicable just and reasonable area rates. Indeed, if, as the Commission now claims, small producer rates were to remain

[10] As pointed out by the Court below (Pet. App. 8a), the Commission in Order No. 428 undertook to justify its action on the ground that the Act did not impose a mandatory obligation upon it to regulate all wholesale sales of gas. See Pet. App. 30-31a, *supra* p. 4. Similarly, the Commission's brief before the Court below flatly conceded (at p. 35) that "[t]he Commission's order does not purport to determine the just and reasonable rate for sales by small producers. See, also, *infra* pp. 15-16.

subject to the Act's just and reasonable standards, there would have been no occasion for the inclusion in Order No. 428 of the indirect regulatory scheme. As noted by the Court below (Pet. App. 14a):

> "* * * It strains credulity to assert that the Commission meant to achieve just and reasonable rates through normal market forces, while in the very same Orders it refused to let pipelines and large producer plant operators pass on these 'just and reasonable' rates without further review under new non-statutory standards."

2. The Commission's actions flaunt the Congressional limits upon its authority. The Act expressly provides for *all* wholesale sales of natural gas to be subject to its substantive rate provisions and leave no room for Commission exemption from this "heart of the * * * regulatory system" (*F.P.C.* v. *Hope Natural Gas Company,* 320 U.S. 591, 611, (1944)). Thus, Section 1(b), App., *infra,* p. 1a provides for the Act to "apply * * * to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use * * *."[11] Section 4(a), App., *infra,* p. 1a, prescribes in pertinent part:

> "*All* rates and charges made * * * by *any* natural gas company * * * and *all* rules and regulations affecting or pertaining to such rates * * * shall be just and reasonable, and *any* such rate or charge that is not just and reasonable is hereby declared to be unlawful." (Emphasis supplied.)

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[11] Section 1(c), added in 1954, 68 Stat. 36, 15 U.S.C. 717(c), contains a limited exception not here applicable.

And Section 5(a) App., *infra,* pp. 1a-2a, provides:

> "Whenever the Commission, after a hearing * * * shall find that *any* rate, charge, or classification demanded, observed, charged, or collected by *any* natural-gas company in connection with *any* transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that *any* rule, regulation, practice, or contract affecting *such* rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order * * *". (Emphasis supplied.)

In line with these "flat and unqualified" rate provisions of the Natural Gas Act (*cf. American Trucking Associations* v. *F.C.C.,* 377 F.2d 121, 130 (D.C. Cir., 1966), *cert denied,* 386 U.S. 943 (1967)), it has been recognized and accepted since at least this Court's decision in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672 (1954), that:

> "* * * the legislative history indicates a congressional intent to give the Commission jurisdiction over the rates of *all* wholesales of natural gas in interstate commerce, whether by a pipeline company or not and whether occurring before, during or after transmission by an interstate pipeline company." (347 U.S. at 682). (Emphasis supplied.)

In that case, which involved the question of the Commission's jurisdiction over producer sales generally, this Court went on to say (*Id.* at 682-684):

> "There can be no dispute that the overriding congressional purpose was to plug the 'gap' in regulation of natural-gas companies resulting from judicial decisions prohibiting, on federal constitu-

tional grounds, state regulation of many of the interstate commerce aspects of the natural-gas business." [fn. omitted] "* * * Thus, we are satisfied that Congress sought to regulate wholesales of natural gas occurring at both ends of the interstate transmission systems."

See, also, *F.P.C.* v. *Southern California Edison Co.*, 376 U.S. 205, 216 (1964); *Saturn Oil & Gas Company, Inc.* v. *F.P.C.*, 250 F.2d 61, 67 (10th Cir. 1957), *cert denied*, 355 U.S. 956 (1958) (holding that "* * * there is nothing in the Natural Gas Act which makes its applicability depend on the size or the integration of the gas operation".); *Deep South Oil Company of Texas* v. *F.P.C.*, 247 F.2d 882, 887 (5th Cir. 1957) (holding sales of natural gas by "a small unintegrated corporation" to be subject to regulation under the Act); cf. *Commission Order No. 174-B*, 13 FPC 1576, 1577 (1954).

3. Nor does Section 16, App., *infra*, p. 2a, vest authority in the Commission to ignore or even modify the clear mandate of Sections 4 and 5. However broad and sweeping may be the power vested in the Commission by that Section, it plainly was not intended to delegate to the Commission authority to revise or modify the coverage as explicitly prescribed by Congress in other provisions of the Act.

This Court has not given Section 16 any broader construction. In *F.P.C.* v. *Louisiana Power & Light Co.*, 406 U.S. 621 (1972) relied on by the Commission (Pet. p. 11), this Court first determined that Section 1(b) included authority for the Commission to control curtailments before it invoked Section 16 as a basis for its holding that the Commission has "broad powers to

devise effective means to meet these responsibilities." (See 406 U.S. at 636-642).

Likewise, the special classification for small producers which this Court approved under Section 16 in *Permian Basin Area Rate Cases,* 390 U.S. 747 (1968) (also relied on by the Commission (Pet. pp. 4, 11, 13)) related to the rule making proceeding directed at relieving small producers from the burdens of complying with certain filing and reporting requirements.[12] This special classification, however, did not extend to exempting small producers generally from the area rates there fixed for the Permian Basin.[13] To the contrary, small producer rates still remained subject to the Act's just and reasonable rate standards and this Court specifically noted that "the exemptions created by the Commission" were "fully consistent with the terms and purposes of its statutory responsibilities" (See 390 U.S. at 787). As stated by the Court below with reference to Section 16 (Pet. App. 10a):

> "The Commission can only classify '[f]or the purposes of its rules and regulations.' It can only prescribe rules and regulations 'to carry out the provisions of this chapter.' Section 16 thus does not give the Commission independent powers.

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[12] Contemporaneously with the litigation in *Permian,* the Commission went ahead with that rule-making proceeding. As a result, and prior to, and independently of, Order No. 428, the Commission issued Order No. 308, 34 FPC 1202 (1965). See, *supra,* p. 10.

[13] The sole exception to the complete applicability to small producers of the area rates established in *Permian,* was the so-called quality adjustment provisions. However, this Court's affirmance of that exception was based on a finding that its effect was *de minimis.* See 390 U.S. at 786.

Rather, it provides for implementation of the core sections of the Act, such as Section 4.'"[14]

Moreover, the holding below is not contrary to this Court's further observation in *Permian* (390 U.S. at 795) with regard to the relevancy of market prices in the fixing of just and reasonable area rates (see Pet. p. 13.)[15] As noted *supra*, pp. 4, 10, the rationale underlying Order No. 428 is that the statutory standards are inapplicable since the Commission has exercised its discretion to waive compliance—not that market prices comply with these standards. Order No. 428 contains no finding that the prices in small producer contracts (which the order would allow to be charged) are just and reasonable. Nor would the Commission validly make any such finding. Not only was Order No. 428 issued without evidentiary hearing or record, but it would grant blanket advance authorization to small producers wherever located to charge whatever prices they might thereafter be able to negotiate with their purchasers. Since there is no inherent correlation,

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[14] The suggestion of Mr. Justice Clark in *F.P.C.* v. *Hunt*, 376 U.S. 515, 527 (1964), also cited by the Commission (Pet. p. 4) was pure dictum. Moreover, the situation of the National Labor Relations Board there referred to is not in fact analogous; in contrast to the flat, unqualified mandate of the Natural Gas Act, the National Labor Relations Act expressly vests broad discretion in the Board whether to exercise its jurisdiction. See, *e.g. Guss* v. *Utah Labor Relations Board*, 353 U.S. 1, 13-14 (1957) (Mr. Justice Burton dissenting).

[15] The Court's observation thus cited by the Commission does not constitute a holding that market prices might be relevant in appropriate circumstances to establishing just and reasonable area rates. Rather, the Court there only noted the existence of the question and expressly refrained from passing on it.

much less identity, between market prices and regulated just and reasonable rates (*cf. F.P.C.* v. *Hope Natural Gas Co.,* 320 U.S. 591, 601 (1944), the Commission's *a priori* advance and sweeping approval of small producer contract prices could not be grounded on an application of the just and reasonable standard.

4. Finally, the indirect regulation of small producers proposed by the Commission is not an effective substitute for the direct regulation explicitly provided in the Natural Gas Act. In addition to reopening a regulatory gap which Congress and this Court thought had been closed by the Natural Gas Act, the standard which the Commission proposes to apply in determining whether to allow the small producers prices as costs to the purchasers is not the "just and reasonable" standard provided in the Act but rather a standard based on whether that price is

> "* * * unreasonably high, considering appropriate comparisons with highest contract prices for sales by large producers or the prevailing market price for intrastate sales in the same producing areas."

These alleged criteria suffer from the further infirmity that they are vague and hence fail to provide the requisite guidelines to the purchasing pipeline or large producer in evaluating the risks incurred in agreeing to pay a particular price to a small producer.

Had Congress shared the Commission's present views as to the effectiveness of such indirect regulation, there would have been no occasion to enact the Natural Gas Act or Federal Power Act; there would have been no "gap" disclosed by *Public Utilities Commission* v. *Attleboro Steam and Electric Co.,* 273 U.S. 82 (1926)

since the local regulatory agencies clearly had the authority to disallow imprudent or excessive payments made by the local utilities subject to their jurisdiction. Similarly, had this Court shared these Commission views, there would have been no occasion for it to rule in *Phillips Petroleum Co.* v. *Wisconsin,* 347 U.S. 672 (1954) that independent producers were subject to direct regulation under the Natural Gas Act, since the Commission already had the authority to disallow any imprudent or excessive payments for gas made by the pipeline companies to such producers.[16]

Patently, therefore, neither Congress nor this Court regarded the "indirect regulation" now urged by the Commission as providing adequate and comprehensive regulation. To the contrary, as this Court has repeatedly held, Congress, in enacting the Natural Gas Act, rejected such indirect regulation as creating a regulatory gap. Accordingly, Congress provided for the elimination of that gap by subjecting all wholesale sales of gas to direct regulation under the Act and requiring the rates charged for all such sales be just and reasonable. The Commission's proposal in Order

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[16] The Commission's claim, that the small producer sales (which it computed as 10% of all 1969 pipeline purchases) is *de minimis,* is inconsistent with its earlier determination in *Permian Basin Area Rate Cases,* 34 F.P.C. 159, 235 (1965) that such gas represents 15% of the aggregate interstate gas supply "and is a substantial factor in the cost of the gas supply of millions of American consumers."

Moreover, the 10% figure itself is suspect. As an average, it minimizes the magnitude of the small producer purchases made by a number of pipelines. (cf. *Permian Basin Area Rate Cases, supra* at 235). In addition, it admittedly does "not include resales to pipelines by large producers of gas purchased from small producers" (Pet. App. 32a, fn. 1), whereas the record shows such resales in fact to be very substantial (R. 113, 130-131).

No. 428 is contrary to both the Congressional intent in enacting the Natural Gas Act and this Court's understanding in deciding the *Phillips* case, *supra.*[17]

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petitions for writ of certiorari should be denied.

Respectfully submitted,

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[17] Even if viewed as an experiment as urged by the Commission (Pet. p. 12), the assurance provided in Order No. 428 that small producer contracts "will not be subject to change" (Pet. App. 31a) points to inevitable long-term consequences. Natural gas contracts typically are for 20 or more years. Cf. *United Gas Pipeline Co.* v. *Mobile Gas Service Corp.*, 350 U.S. 332, 338-339 (1956). See also Pet. App. p. 15a.